

REMARKS

Reconsideration in view of the foregoing amendments and the following remarks is respectfully requested. Moreover, the applicants have reviewed the Non-Final Office Action of April 6, 2007, and submit that this paper is responsive to all points raised therein.

I. Status of the Claims

Claims 1, 2 and 5-39 are pending in the instant Patent Application. Claims 1, 2 and 5-33 have been amended. Claims 3 and 4 were cancelled previously. Claims 34-39 are newly added.

Claims 1, 2 and 5-33 have been amended for punctuation and clarity. Claim 5 was amended for a typographical error. Claim 8 was amended for proper antecedents, Claims 9, 10, 13 and 14 were amended for clarity and consistency, to overcome the rejections under 35 USC 112, second paragraph, as discussed below. Claim 15 was amended for clarity. Claim 33 was amended to make it dependent on claim 24. Claims 1, 21, 24, 27 and 30, are amended and discussed below. Support for these claim amendments is, for example, shown in drawing figures 1-3.

II. Allowable Subject Matter

The applicant notes the Examiner's indication of allowable subject matter of claims 20, 22 and 25. These claims have been rewritten with the limitations of their base claims and appear as newly added claims 34-39.

III. Specification Amendments

The specification has been amended to delete paragraph [0007]. This paragraph is misplaced and should have been in the "Summary" section, but has been deleted as cumulative.

IV. Objections to Claim 5

Claim 5 was objected to. Claim 5 has been amended as detailed above. It is believed that this amendment cures the objection to claim 5, whereby this claim is now proper.

V. Rejections Under 35 USC 112, second paragraph

Claim 30 was rejected under 35 USC 112, second paragraph, as being indefinite, for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

It is respectfully asserted that claim 30 has been amended to further define the tile cap as well as the recitation of the tile cap being bacteriostatic. It is respectfully asserted that the term "bacteriostatic", it is well known, and means "inhibiting or retarding the growth of bacteria." Accordingly, this term is well known and defined, whereby claim 30 is proper under 35 USC 112, second paragraph and the rejection under 35 USC 112, second paragraph, should be withdrawn.

VI. Rejections Under 35 USC 102(b)

Claims 1, 2, 5, 7, 11, 13, 16, 19, 24, 25 and 33, were rejected under 35 USC 102(b) as anticipated by Forshee (U.S. Patent No. 4,885,882) (Forshee '882).

Claim 1 has been amended to recite a formed or molded article which fits over an existing tile surface, including oppositely disposed first and second surfaces with at least one edge formed of the second surface converging toward the first surface, this edge configured for conforming with a corresponding edge of an existing tile of the existing tile surface, and an adhesive in communication with the second surface.

Independent claim 24 also includes recitations to using a tile cap of this structure.

Forshee '882 is directed to a channel member 20 for fitting over a deck board. It is not designed to fit over tile and its surfaces do not converge at an edge for conformance with the edge of the surface that it covers. This is because edge conformance is not necessary nor desired with the Forshee '882 channel member 20, instead this channel member 20 is only covering and protection of a deck board.

For the reasons above, Forshee '882 fails to show, teach or suggest any structure like that recited in claims 1 and 24. Accordingly, claims 1 and 33 are not anticipated by Forshee '882 under 35 USC 102(b).

Since claims 1 and 24 are not anticipated by Forsheet '882 under 35 USC 102(b), claims 2, 5, 7, 11, 13, 16, 19, 25, and 33, respectively dependent thereon, are also not anticipated by Foresheet '882 for the same reasons. These claims further distinguish over the cited art.

Claim 24 was rejected under 35 USC 102(b) as anticipated by Dillon (U.S. Patent No. 3,953,268) (Dillon '268).

Claim 24 has been discussed above. That discussion is applicable here.

Dillon '268 is directed to a method for installing tile trim to tiles that are receded from the edge of the counter, cabinet or the like. This reference lacks the converging surfaces to form an edge for conformance with the edge of the surface that it covers.

For the reasons above, Dillon '268 fails to show, teach or suggest any structure like that recited in claim 24. Accordingly, claim 24 is not anticipated by Dillon '268 under 35 USC 102(b).

VII. Rejections Under 35 USC 103(a)

Claims 6, 8-10, 12, 14, 15, 17 and 18 were rejected under 35 USC 103(a) as unpatentable over Forshee '882.

These claims are all dependent on claim 1, which as amended, has been discussed above. That discussion is applicable here.

Forshee '882 has been discussed above. That discussion is also applicable here.

As discussed above, Forshee '882 fails to meet all of the limitations of independent claim 1. Accordingly, Forshee '882 also fails to teach or suggest the structure of claim 1, and as such, it can not render this claim obvious under 35 USC 103(a).

Since claim 1 is nonobvious over Forshee '882 under 35 USC 103(a), claims 6, 8-10, 12, 14, 15, 17 and 18, dependent thereon, are also allowable over this cited art for the same reasons. These claims further distinguish over this cited art.

Claims 21, 23, and 26-32, were rejected under 35 USC 103(a) as unpatentable over Dillon '268.

These claims are all dependent on claim 21, 24, 27 and 30. Claims 21, 27 and 30 have been amended similar to that for claim 24. As claim 24 has been discussed above, that discussion is applicable here for claim 24 as well as claims 21, 27 and 30.

Dillon '268 has been discussed above. That discussion is also applicable here.

As discussed above, Dillon '268 fails to meet all of the limitations of independent claims 21, 24, 27 and 30. Accordingly, Dillon '268 also fails to teach or suggest the methods of claim 21, 24, 27 and 30, and as such, it can not render these claims obvious under 35 USC 103(a).

Since claims 21, 24, 27 and 30 are nonobvious over Dillon '268 under 35 USC 103(a), claims 23, 26, 28 and 29, and 31 and 32, respectively dependent thereon, are also allowable over this cited art for the same reasons. These claims further distinguish over this cited art.

VIII. Conclusion

The applicants note the Examiner's citation of Ulman (U.S. Patent No. 2,970,872), Sciarrino, et al. (U.S. Patent No. 6,413,337), Fernandes (U.S. Design Patent No. D536,559) and Fernandes (U.S. Patent Application Publication No. 2005/0262788) to complete the record.

Should the Examiner have any question or comment as to the form, content or entry of this paper, the Examiner is requested to contact the undersigned at the telephone number below. Similarly, if there are any further issues yet to be resolved to advance the prosecution of this application to issue, the Examiner is requested to telephone the undersigned counsel.

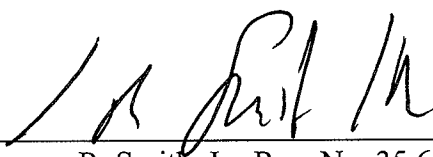
Allowance of all pending claims, 1, 2 and 5-39, is respectfully requested.

The fees of \$300 for 3 additional independent claims in excess of the 6 independent claims previously paid for and \$100 for 4 additional claims in excess of the 33 previously paid for are included herewith. The applicant believes no further fees are currently due; however, if any fee is deemed necessary in connection with this Response, please charge Deposit Account No. 12-0600.

Respectfully submitted,
LATHROP & GAGE L.C.

Date: June 28, 2007

By


Jerome R. Smith, Jr., Reg. No. 35,684
2345 Grand Boulevard, Suite 2400
Kansas City, MO 64108-2612
Tel: (816) 460-3506
Fax: (816) 292-2001
Attorney for Applicant